No. 9(1)82-8 Lab|3032.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Durable Steel Products 16|5 Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT HARYANA FARIDABAD.

Reference No. 458 of 1980

between

SHRI JANTRI YADAV, WORKMAN AND THE RESPONDENT MANAGEMENT OF M|S. DURABLE STEEL PRODCTS, 16|5, MATHURA ROAD, FARIDABAD.

Present:—

Shri R. N. Roy, for the workman.

Shri R. C. Sharma, for the respondent management.

AWARD

This reference No. 458 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID|FD|144-80|50551, dated 22nd September, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Jantri Yadav, workman and the respondent management of M|s. Durable Steel Products 16|5, Mathura Road, Faridabad. The terms of the reference was:—

> Whether the termination of service of Shri Jantri Yadav was justified and in order? If not, to what relief is he entitled?

On receiving this reference order, the notices were issued to the parties. They appeared and filed their pleadings. According to the demand notice and claim statement, the case of the workman is that he joined the respondent service in May, 1979 at the monthly salary of Rs. 195 and stopped at the gate on 28th June, 1980 without compliance of mandatory prerequisites requirements of Section 25-F of the Industrial Disputes Act, 1947. Though the ESI and Provident Fund was applicable to the factory and its employees, yet there is no deduction under these provisions for the workman's wages. The present termination amounts to retrenchment under section 2(oo) of the Industrial Disputes Act, 1947 and the workman may be reinstated with backwages and contiunity of service. The termination was wrongful and illegal and against the priniciples of natural justice.

In the written statement, the respondent has preliminary objection that neither the dispute was raised by the workman employed with the management nor through a recognised union of the factory and the reference is bad in law. The factory is seasonal one and the workman might have worked as casual workman. The workman worked for a few days in the month of June casual worker and he was not entitled for any notice pay, earned leave etc. The claimant was not a regular employee of the factory so no ESI and P. F. contribution were deducted from the service of the claimant. He had less than one month service so there was no termination. No appointment letter was issued to the workman as he was a casual workman.

On the pleadings of the parties, the following issues were framed:—

(1) Whether the reference of this workman is maintainable in the present form?

(2) Whether the termination of service of the workman is proper, justified and in order? If not to what relief is he entitled?

(3) Relief?

My findings on issues are as under:—

ISSUE NO.1 :—

On issue No. 1, the representative of the respondent argued that the demand notice was raised by the President, Mercantile Employees' Association and not by the workman individually and the Mercantile Employees' Association has no following and there is no branch or union under the same name in the factory. So the demand notice made by the President, Mercantile Employees' Association and not by the workman individually cannot hold good in law and the reference is bad in law and liable to be rejected.

The representative of the workman argued on this issue that before the introduction of section 2-A of the Industrial Disputes Act, 1947,

this contention of the respondent have some force but after the induction of section and the ruling of the different High Courts and Supreme Court clears that the individual claim or demand notice through union hold good and the Mercantile Employees' Association is a registered Trade Union under Registration No. 379 and by the virtue of the constitution of the association the workman sands assured and supported by all the members of the association to protect his rights, interests and to support him with financial and other assistance. So the demand notice was correct and according to law.

After hearing the arguments and going through the file, I am of the view that the reference is not bad and the issue is decided in favour of the workman and against the respondent.

ISSUE NO. 2 :—

Issue No. 2 is as per reference? The respondent's representative argued as stated by Shri K. C. Chokar as MW-1 that the claimant has entered as casual labour in the factory in the month of June, 1980 and before this the workman has not worked in the factory. He joined on 4th June, 1980 and worked upto 27th June, 1980 as shown in Ex. M-1, extract of the attendance register and Ex. M-2 the photostat copy of register for the month of June, 1980. The claimant had worked as helper for a few days and he has further stated that there is no union in the factory known as Mercantile Employees Association and there is no membership of the Association in the factroy. The claimant has not produred any thing more in his evidence expect this attendance card which only proves that he was an employee in the month of June, 1980 which is admitted by the respondent. The E.S.I. and Provident Fund subscription were deducted from the wages of regular employees of the company and as the claimant was not regular employee and was only casual workers and worked for a few days in the factory, so no ESI or Provident Fund contribution was deducted from the wages of the claimant, and when the claimant was only a casual labour for a few days so he was not given the appointment letter at the time of recruitment. In these circumstances, the claimant has not established on record that he was regular employee and working for the last one year. So there is no case of the claimant and he has failed to establish that he was a regular emplyee and worked more than a few days in the factory. So there is no question of termination of services of the claimant and there was no question of giving any compensation to the claimant under section 25-F of the Industrial Disphtes Act, 1947.

The representative of the workman argued that the claimant was employed by the management since May, 1979 as helper drawing a monthly salary of Rs. 195 and he was a member of the Mercantile Employees' Association and the workman was terminated on 28th June, 1980 on the plea of not required and that too without compliance of mandatory pre-requires requirement of Section 25-F of the Industrial Disputes Act, and at the time of termination the workman has at his credit 15 days earned leave, bonus for the year 1979-80 notice pay. He further argued that though the ESI and Provident Fund are applicable to the factory and its employees yet there is no deduction of the workman towards the E.S.I. and Provident Fund and the workman has only employee's attendance card for the month of June, 1980, as stated by the workman in his statement as WW-1. The claimant reported for duty on 28th June, 1980 and was not allowed to resume his duty by the chowkidar and was not paid his due wages for June, 1980 and other retrenchment compensation. The termination amounts to retrenchment under section 2(oo) of the Industrial Disputes Act, 1947 and the same is without compliance of the mandatory provisions and the workman is entitled for his reinstatement with full back wages and continuity of service.

After hearing the arguments of both the parties and carefully going through the file, I am of the view that the workman has failed to establish that he was working in the factory since May, 1979 and worked up to June, 1980, which was very essential to come to the conclusion that the workman was the employee of the respondent in this period. The respondent management brought the attendance register and wages register from May, 1979 and June, 1980 in the Court but there was no name of the claimant in thest registers except in the month of June, 1980 and the copies of the same are produced by the respondent as M-1 and M-2. The workman has also failed to produce any oral witness of his co-workman to corroborate this fact that he was working in the factory from May, 1979 up to

June, 1980 and he was terminated illegally, so in the absence of any proof from the side of the workman it is not established that the workman was a regular workman in the factory and the plea taken by the respondent that he was a casual workman taken on 4th June, 1980 and worked up to 27 June, 1980 seems correct. So there is no termination and the question of justification of the order of termination does not arise. In these circumstances, the workman is not entitled for any relief under the law.

This be head in answer to this reference.

Dated the 13th March, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endorsement No. 673, dated 19th March, 1982.

Forwarded (four copies) to the Commissioner and Secretary, to Government Haryana, Labour and Employment Department, Chandigarh as required unded section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

No. 9(1)82-8Lab/3033.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Sovrin Knit Works, 20/4, Mathura Road, Faridabad:—

IN THE COURT OF SHRI HARI SINGH KAUSHIK,

PRESIDING OFFICER,
LABOUR COURT, HARYANA,
FARIDABAD

Reference No. 65 of 1980

between

SHRI MOHMAD MUSLIM ANSWARI, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S SOVRIN KNIT WORKS, 20/4, MATHURA ROAD, FARIDABAD

Present :

Shri R. N. Roy for the workman.

Shri S. L. Gupta for the respondent-management.

AWARD

This reference No. 65 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/13-78/8027, dated 13th February, 1980, under section 10(1)(c) of the Industrial Disputes Act, 1947, existing between Shri Mohmad Muslim Answari, workman and the respondent-management of M/s Sovrin Knit Works, 20/4, Mathura Road, Faridabad. The term of the reference was:—

> Whether the termination of service of Shri Mohmad Muslim Answari was justified and in order ? If not, to what relief is he entitled?

After receiving this order of reference, the notices were issued to the parties. The parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that the workman claimant is working with the employer respondent for the last four years on a permanent post of Checker and was drawing a salary of Rs. 375 per month. His work and conduct was always quite satisfactory. On account of trade union activities, he was victimised on 31st August, 1978, on 31st August, 1978, the management intimidated him and manhandled him on account of his trade union activities and ultimately on 2nd September, 1978 his services were terminated by the respondent without giving any reasons and after this illegal termination the respondent tried to make out a case of retrenchment, but even the said retrenchment was quite illegal and unjustified. It clearly violated the law, standing orders and the principles of natural justice. So the workman is entitled for his reinstatement with continuity of service and back wages.

According to the written statement of the respondent, the case of the respondent is that the workman joined his service on 1st June, 1977 and he was drawing Rs. 375 per month at the time of retrenchment. The respondent factory was engaged in job work. The strength of the workmen keeps on fluctuating. The

claimant was retrenched from services on account of paucity of work. Seniority list was also displayed. The retrenchment order and the benefits admissible under section 25-F of the Industrial Disputes Act, 1947 were offered to the claimant simultaneously, but the claimant refused to accept the same. So the order of retrenchment was sent to the claimant by registered post and his full and final dues including benefits of section 25-F of the Industrial Disputes Act, 1947 were also sent to the workman by money order, which were received by the claimant. Form 'P' was also sent to the Government. There is no victimization or unfair labour practice as alleged by the claimant and the workman is rightly retrenched.

On the pleadings of the parties, following issues were framed:—

(1) Whether the workman was retrenched from the service of the management properly, and act of the management is justified?

(2) Whether the termination of the service of the workman is justified and in order? If not, to what relief is he entitled?

My findings on issues are as under:—

ISSUE NO. 1:

The representative of the respondent argued on this issue that the factory was doing the job work on the orders of the outside firm and the workman was working as Assistant Supervisor from 1st March, 1977 and was retrenched on 31st August, 1978 as stated by Shri Thakur Mahinder Singh, manager of the respondent-company as MW-1. The witness has stated that since the company is doing the job work for other factories, therefore, some time the work load is less and some time is more and the workers were employed according to the demand of the work. The claimant was removed because there was no much work in the company and the workman was the junior most in the category and he was retrenched. The job work shown in Exhibit M-1 and M-2 for the year 1978 and 1979 clears the position of the work with the respondent-factory. He argued that Exhibit M-1 clearly shows that in the month of January, 1979 the factory has a work of over 2 lacs and in December it remains and in the month from July to November each case less than one lac and the job work shown in the Exhibit M-2 for the year 1978 shows that in the month of January, 1978 the work was about two lacs and continued up to December, 1978. These documents makes the position clear about the work with the factory. He further argued that as stated by the witness MW-1 the other difficulties faced by the respondent was shortage of power and shortage of diesel. So in these circumstances, the respondent-management decided to retrench category-wise and prepared a list seniority of Export Department checking staff which is Exhibit M-12 in which there are 11 persons and the last number is of the claimant. The date of joining the department is also shown in the list of every workman and the date of joining of the workman, is shown 1st June, 1977, which is corroborated by the appointment letter of the claimant which is Exhibit M-14. The workman admitted the signatures on this application form in his statement as MW-1. The date given in the application is 1st June, 1977. It is established fact now that the workman joined this department of the respondent on 1st June, 1977 and according to the seniority list the claimant was the junior most person to be retrenched to the category of Assistant Supervisor. The respondent prepared the 'P' form which, Exhibit M-9 which was sent to the Secretary, Labour Department for the information for this retrenchment. The witness further stated in his statement that order of retrenchment was also sent to the workman when he refused to accept the same through registered A.D. The order is Exhibit M-3 and the postal receipt is Exhibit M-4 and acknowledgement is Exhibit M-5. The workman was also offered his dues and compensation. An account was prepared by the respondent as Exhibit M-6/1 and the same was sent through the statement of Accounts prepared, which is Exhibit M-7 which was received by the workhan. The workman also received the money order, Exhibit

M-6 which the workman has admitted in his statement as WW-1. He further argued that after the demand notice the Conciliation Officer sent the notice to the respondent which is Exhibit M-10 and on that notice the respondent attended the Conciliation proceedings and statement was given before the Conciliation Officer as given in Exhibit M10/1. After this conciliation proceedings the respondent received a letter from the Government which is exhibit M-11 for rejection of demand notice of the claim as stated by the respondent before the Conciliation Officer. So the demand notice was rejected by the Government and after this rejection this reference has come without giving any opportunity to the respondent to be heard. The first view of the Government was correct that as the claimant is retrenched according to the provisions of the law so this case is not fit to be referred for adjudication. The Government admitted this fact that the workman was retrenched perfectly correct according to the provisions of the law and this reference was came without any intimation to the respondent. He further argued that the statement and the plea taken by the respondent is further corroborated by another witness of the respondent Shri O. P. Yadav stating that the factory was doing the job work and export ready made garments in the year 1978. The manufacturing condition of the factory was very bad due to shortage of power and coal and orders from the different concern. So the workman was retrenched due to shortage of work and after adopting the local process according to law. He further argued that the claimant has stated in his demand notice and claim statement that he is working for the last four years in the factory but he has given no proof that he was working in the factory for the last four years without any documentary proof it is not established that he was working for the last four year. The workman has produced the identity card, Exhibit W-1 issued by the respondent which clears that the claimant has changed the date of this card which very clearly visible and it is also wrongly done because in this identity card the date of appointment is shown as 11th December, 1975 but the workman has produced another documents, Exhibit M-2 as job card for the date 6th December, 1975, which shows one of the two documents are wrong and both the documents are fabricated. The claimant has not mentioned his date of joining in his demand notice or claim statement before this Court. He further argued that in his statement as WW-1 he has stated that he started his work with the respondent factory from 24th October, 1975 as Tailor up to 25th January, 1976 and thereafter he was promoted as Assistant Supervisor. There was no proof to this fact that he joined in the year 1974 because these two documents produced by the workman does not show the date of appointment and if the appointment is shown in Exhibit W-2, it does not corroborate the plea taken by the workman as correct. So the workman was retrenched according to law. He further argued that the claimant has stated in his demand notice and claim statement that he was retrenched due to union activities and victimised for the union activities but the workman did not produced any evidence. Even in his statement on which union he was the member and what action he had done as member of the union to annoy the respondent for victimisation. There is no evidence for any union in the factory. So the plea taken by the respondent that he was retrenched due to the union activities is quite wrong and without any proof on the file.

The representative of the workman argued that the respondent had not complied with the provisions of the law for the retrenchment of the claimant. He argued that the retrenchment notice was displayed on 31st August, 1978 and at the date he was offered the compensation as stated by the respondent witness, but there is no proof of offering the claimant's dues. The claimant dues were not offered at the time of the retrenchment and were sent by money order which were not according to the provisions of the law. He further argued that no seniority list was displayed at the notice

board and the form 'P' sent to the Government is not proved here on the file. So no 'P' form was sent to the Government and seniority list was displayed on the notice board. The claimant was working in the factory from the last four years as tailor and then he was promoted as Assistant Checker in the department in the year 1976 and the persons who came after his appointment in the respondent factory are still working in the factory and the claimant was terminated violating the provisions of the law. The plea taken by the respondent that the workman was not working with the respondent factory before June, 1977 is quite wrong and the respondent witness has stated wrongly in his cross-examination that the claimant might be a contractor's labour before this date. But the respondent has not produced any name of the contractor or any document that the contractor is working in the factory of the respondent. The claimant was the employee of the respondent and the respondent did not bring the relevant record in the Court for showing the presence of the workman in the factory. So the retrenchment made by the respondent is illegal and cannot stand in the eye of law. He further argued that the workman has produced Exhibit W-1 the job card, dated 6th December, 1975 which is admitted a document belonging to the respondent and the identity card on which date of appointment is given, is also produced by the workman as Exhibit W-2 clearly proves that the workman retrenchment was illegal because the junior persons were serving in the factory. The workman has also produced the complaint file by the workman to the Labour Inspector which, Exhibit W-3 and Exhibit W-4 which was received by the Labour Inspector on 4th September, 1978 and fixed for hearing for 13th September, 1978. It clearly shows that the workman was old and regular employee of the respondent and the action taken by the respondent was illegal and on account of victimization due to union activities.

After hearing the arguments of the parties and carefully going through the file, I am of the view that the respondent produced all the documents required for the retrenchment and the same were put up before the Conciliation Officer in the Conciliation Proceedings and the Conciliation Officer agreed with these documents and the same report on which the Government rejected the demand notice of the claimant and sent the information to the respondent as Exhibit M-11 which is clear proof that the Government has rejected the demand notice of the claimant on account of retrenchment legally. The respondent offered the compensation to the claimant after preparing the accounts of the claimant as Exhibit M-7 and sent through the money order, Exhibit M-6 which was received by the claimant. The workman has admitted this fact in his statement that he received the money order money as retrenchment compensation. After receiving the retrenchment compensation in my view there is no case of the workman for his retrenchment. Although he has a claim if the respondent employee another persons in his category retrenched and the retrenchment was perfectly all right and there is nothing wrong in the order of retrenchment. So this issue is decided in favour of the respondent against the workman.

ISSUE NO. 2:

After deciding the issue No. 1 in favour of the respondent, there is no need to discuss the issue No. 2 as per reference, whether the termination is in order and justified. The respondent retrenched the workman and paid compensation through money order, which was received by the claimant as admitted in his statement as WW-1. So the workman is not entitled to any relief in these circumstances. This may be read in answer to this reference.

The 13th March, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 674, dated 19th March, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.